

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

EL RANCHO MARKET

Employer

and

Case No. 31-RD-1417

LARRY D. SUTCLIFFE, an Individual

Petitioner

and

UFCW LOCAL 1036

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under § 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. ^{1/}
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. ^{2/}
3. The labor organization involved claims to represent certain employees of the Employer. ^{3/}

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the § 9(c)(1) and §§ 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of § 9(b) of the Act ^{4/}:

INCLUDED: Food clerk/sous chef, meat cutter, checker, clean-up person/kitchen, service, maintenance, line cook, line chef, and lead employees.

EXCLUDED: Office clericals, box persons, utility clerks, all other employees, grocery manager, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION ^{5/}

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by **UFCW Local 1036**.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that an election eligibility list, containing the **FULL** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 31 within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before **April 4, 2000**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

RIGHT TO REQUEST REVIEW

Under the provision of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **April 11, 2000**.

DATED at Los Angeles, California this 28th day of March, 2000.

/s/ James J. McDermott
James McDermott, Regional Director
National Labor Relations Board
Region 31
11150 W. Olympic Blvd., Suite 700
Los Angeles, CA 90064

FOOTNOTES

- 1/ The Union did not appear at the Hearing. I note that the record reveals that the Union did receive proper notice of this proceeding, including the time and date of the Hearing.
- 2/ The Employer, a California corporation, operates a grocery market in the State of California. The Employer annually purchases and receives in California materials and supplies valued in excess of \$50,000 from suppliers located inside the State of California, which suppliers receive such goods in substantially the same form from directly outside the State of California. In addition, the Employer annually derives gross revenues in excess of \$500,000. Based on the foregoing, I find that the Employer satisfies the Board's statutory jurisdictional requirement, as well as the Board's discretionary standard for asserting jurisdiction over retail enterprises. Carolina Supplies & Cement Co., 122 NLRB 88 (1959).
- 3/ The Union was not present to enter into a stipulation with respect to its status as a labor organization. In finding that the Union is a labor organization, I note the recent case of United Food and Commercial Workers Locals 951, 7 and 1036 (Meijer, Inc.), 329 NLRB No.69 (September 30, 1999) slip opinion at page 18, in which the Union was found to be a labor organization within the meaning of Section 2(5) of the Act.
- 4/ The unit description is consistent with the unit described in the collective-bargaining agreement between the Employer and the Union which is effective November 23, 1998 through November 25, 2001.

Approximately 60 employees may be eligible to vote under the standards set forth herein.

- 5/ In accordance with § 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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